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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/660,665	09/13/2000	Donald J. McMichael	BAL-8/BA00169	6990

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EXAMINER

GHAFOORIAN, ROZ

ART UNIT	PAPER NUMBER
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3763

DATE MAILED: 05/22/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/660,665

Applicant(s)

MCMICHAEL, DONALD J.

Examiner

Roz Ghafoorian

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 13 March 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-23 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-23 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 13 September 2000 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413) Paper No(s) \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other:

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***Claim Rejections - 35 USC § 112***

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

2. Claims 1-23 are rejected under 35 U.S.C. 112, first paragraph, as containing subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. The applicant has amended the claims to read a deformable arcuate sidewall however the arcuate sidewalls have never been defined as a deformable.

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claims 1-23 rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 1 and 18 are recites the limitation "deformable" in line 6. There is insufficient antecedent basis for this limitation in the claim.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

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A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

4. Claims 1-2, 10, 13-15, 18-21 are rejected under 35 U.S.C. 102(e) as being anticipated by U.S Patent No.5988700 to Prichard

Prichard teaches an adapter body contains at least a first port configured for reserving a distal connector, the first port having at least one arcuate sidewall for frictionally engaging the distal connector to sealing secure the distal connector to the adaptor body; a tube extending between the first port and the medical feeding device. It further comprises of a second port configured for injection of medication there through into the tube. The first port further includes a cylindrical section disposed proximally of the first arcuate sidewall and second arcuate sidewall. The first port also includes a third arcuate sidewall distal of the second arcuate sidewall. The first, second, and third section form a distally extending channel have an increasingly smaller diameter.

5. Claim 1, 3-7, 10-11, 13-15, 17-22 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S Patent No.5267983 to Oilschlager et al.

Oilschlager teaches an adapter body 12 contains at least a first port 42 configured for reserving a distal connector, the first port having at least one arcuate sidewall 12e for frictionally engaging the distal connector to sealing secure the distal connector to the adaptor body; a tube 18 extending between the first port 42 and the medical feeding device. The first port further includes a cylindrical section disposed

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proximally of the first arcuate sidewall 12e and second arcuate sidewall 12d. The first port also includes a third arcuate sidewall 12c distal of the second arcuate sidewall 12d. The first, second, and third section form a distally extending channel have an increasingly smaller diameter. It has at least one arcuate sidewall with a radius between of about 0.18 inches to 0.55 inches. (Col.3, lines 15-30)

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 8-9, 12, 16, 23 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S Patent No.5267983 to Oilschlager et al.

As mentioned above Oilschlager teaches an adapter body 12 contains at least a first port 42 configures for reserving a distal connector, the first port having at least one arcuate sidewall 12e for frictionally engaging the distal connector to sealing secure the dials connector to the adaptor body; a tube 18 extending between the first port 42 and the medical feeding device. The first port further includes a cylindrical section disposed proximally of the first arcuate sidewall 12e and second arcuate sidewall 12d. The first port also includes a third arcuate sidewall 12c distal of the second arcuate sidewall 12d. The first, second, and third section form a distally extending channel have

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an increasingly smaller diameter. It has at least one arcuate sidewall with a radius between of about 0.18 inches to 0.55 inches. (Col.3, lines 15-30)

Oilschlager does not teach the fist arcuate sidewall with a radius of between about 0.45 inches to 0.55 inches.

*In re of Rose*, 220F.2d 459, 463, 105 USPQ 237, 240 (CCPA 1955) it would have been obvious to one having ordinary skill in the art to have changed the size of the sidewalls to a larger size to allow for a larger feeding device connection and hence it would increase the application use and function of Oilschlager's device.

### ***Response to Arguments***

7. Applicant's arguments filed 3-13-2003 have been fully considered but they are not persuasive.

a. Applicant's arguments with respect to claims 1-23 have been considered but are moot in view of the new ground(s) of rejection.

b. The applicant has alleged Oilschlager does not teach a deformable arcuate sidewall. However since there is no definition of deformable in the specification the examiner has taken the dictionary definition of deformable which means to become disfigured, and Oilschlager's arcuate sidewall is capable of becoming disfigured.

### ***Conclusion***

8. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP

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§ 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Roz Ghafoorian whose telephone number is 703-305-2336. The examiner can normally be reached on 8:30am-4:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Brian Casler can be reached on 703-308-3552. Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0858.

RG  
May 15, 2003

  
**MICHAEL J. HAYES**  
**PRIMARY EXAMINER**